



eConveyancing update

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July 2019



Office of the
Registrar General

Government has been working closely with industry on the roll-out of eConveyancing in NSW

Conveyancing reform committee

- Law Society of NSW
- Australian Institute of Conveyancers (NSW)
- Australian Bankers Association
- Mortgage and Finance Association of Australia
- Customer Owner Banking Association
- Australian Finance Conference
- Property Exchange Australia Ltd



Victor Dominello
Minister for Finance, Services
and Property 28 February 2017

“...By July 2019, all standard property transactions in NSW will be conducted electronically, and all Certificates of Title will be phased out in favour of e-Titles.”

What happened in 2017



2017

1 March 2017

Authorised Deposit-taking Institutions (ADIs) (mandatory)

- Standalone discharges
- Standalone National Credit Code mortgages

eCT program (ADIs)

- ADIs receive an eCT on registration of an electronic mortgage

1 August 2017

ADIs (mandatory)

- All refinancing transactions
- All standalone mortgages

eCT program (ADIs)

ADIs receive an eCT on registration of a paper transaction (where they become or remain first mortgagee)

What happened in 2018



1 July 2018

Solicitors & conveyancers (mandatory)

- Standalone Caveats
- Standalone Transfers
- All mortgages, refinance and discharges (including non-ADIs)

1 October 2018

eCT program (ADIs)

All paper CTs held by ADIs with a 1st mortgage were cancelled (ADIs issued with eCTs)

What happened on 1 July 2019?

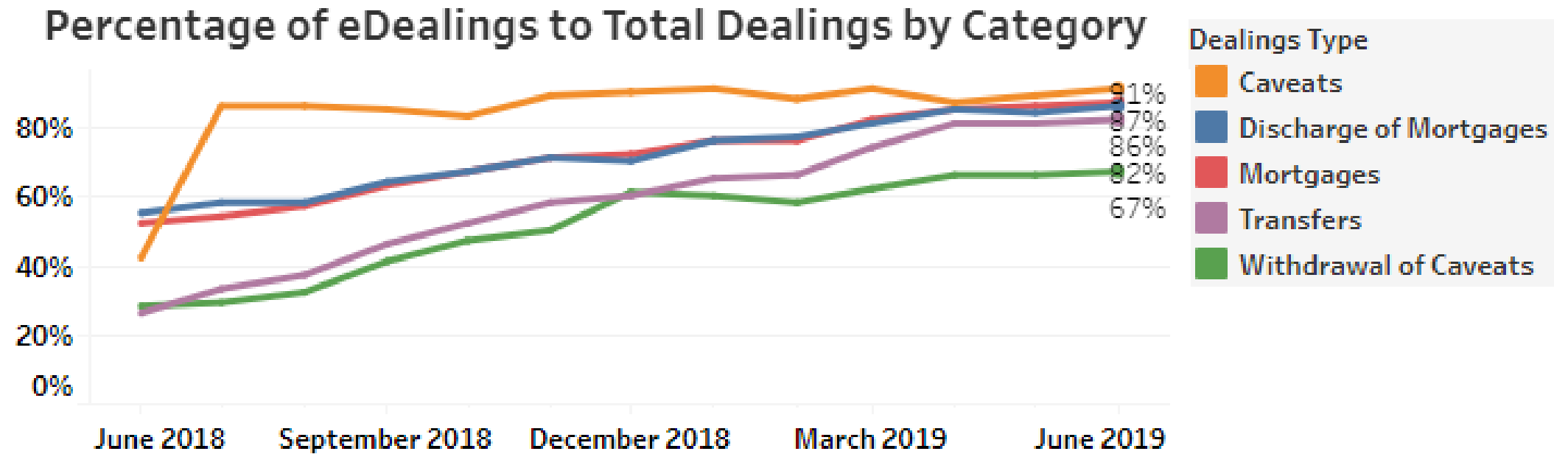


1 July 2019

Everyone (mandatory)

All mainstream property transactions to be lodged electronically.

85 per cent of possible dealings are lodged electronically



Lodgment of Dealings from 1 July 2019



Lodgment of dealings from 1 July 2019

From 1 July 2019, the following dealings must be lodged electronically (if eligible to be lodged electronically) whether standalone, or in combination:

- Transfers
- Mortgages
- Discharges of mortgage
- Caveats
- Withdrawals of caveat
- Transmission applications

Mandates provided for in Conveyancing Rules version 5 available [here](#)

Waivers and Exceptions

Caveat:

- where the caveator is not represented by a legal practitioner or licensed conveyancer;
- accompanied by an attachment, such as a sketch plan;
- that only affects part of the land in a folio of the Register;
- lodged against premises contained in a lease;
- affecting a registered interest (e.g. a mortgage, lease or charge);
- involving multiple caveators who are not represented by a single Subscriber;
- where the written consent of the registered proprietor, for the purposes of section 74O of the RPA, is required.

Withdrawal of Caveat:

- where the caveator is not represented by a legal practitioner or licensed conveyancer;
- that only affects part of the land in a folio of the Register;
- involving multiple caveators who are not represented by a single Subscriber;
- that does not affect all the caveators (when there are multiple caveators).

Waivers and Exceptions

Discharge of Mortgage:

- where the mortgagee is not represented by a legal practitioner or licensed conveyancer;
- that only affects part of the land in a folio of the Register;
- that does not affect all the mortgagees (when there are multiple mortgagees);
- that does not affect all the mortgagors (when there are multiple mortgagors);
- where the mortgage to be discharged is a sub-mortgage, mortgage of lease or mortgage of charge.

Mortgage:

- where the mortgagee is not represented by a legal practitioner or licensed conveyancer;
- over an interest or share in land or part of the land in a folio of the Register;
- that does not affect all the registered proprietors;
- that requires a caveator's consent and/or a Minister's consent;
- affecting more than 20 folios of the Register, which cannot be separated.

Waivers and Exceptions

Transfer:

- where both the transferee and transferor are not represented by a legal practitioner or licensed conveyancer and the transfer is standalone;
- creating a life estate and estate in remainder;
- lodged using a form other than the 01T Transfer form, such as the Transfer Including Easement form 01TE;
- affecting more than 20 folios of the Register, which cannot be separated;
- where an attachment is required, such as a caveator's consent, order of court, or Minister's consent;
- where execution by a person other than the registered proprietor is required, such as a court officer or a guardian when a person's estate is subject to management under the NSW Trustee and Guardian Act 2009;
- where less than all the registered proprietors are affected;
- where land tax is required to be paid from settlement proceeds (until such time as [Conveyancing Rule Waiver 3/2019 – Land Tax](#) is lapsed or revoked);
- where the transfer involves transactions or obligations outside of the Torrens Register, for example where the transaction (or a chain of transactions) involves:
 - properties located in other jurisdictions;
 - the purchase or sale of a company title unit;
 - handing over old system documents relating to qualified or limited title (or both);
 - financial settlement that includes the transfer of a Water Access Licence.

Waivers and Exceptions

Transmission Application:

- where the applicant is not represented by a legal practitioner or licensed conveyancer;
- where an interest in land is affected (e.g. a mortgage, lease or charge);
- where a life estate and estate in remainder is created by the transmission application;
- where an estate in remainder is affected;
- where the applicant is also the registered proprietor who holds the whole of an estate or interest in different capacities and it is intended to show that registered proprietor separately for each share held.

The above waivers are contained in [Waiver CR2/2019](#)

Lodgment of dealings from 1 July 2020

- All dealings that can be lodged electronically must be lodged electronically, whether standalone or in combination.
- The Office of the Registrar General website has a [schedule of dealings](#) that can be lodged electronically, or that are planned to be made available electronically, with an estimated time for release.
- A list of proposed Eligible Dealings must be made publicly available on the ORG website at least ninety (90) days before the dealings have to be lodged electronically.
- This will include dealings such as leases (which are currently available) plus other dealings that will become available over time, such as notices of death and changes of name.
- These mandates do not apply to titles that are not eligible for electronic lodgment.



eCTs and CT Bulk Conversion

CT Bulk Conversion

- All paper certificates of title held by ADIs have been replaced with electronic titles in the next phase of the NSW Government's transition to fully digital standard conveyancing by 1 July 2019.
- NSW LRS performed the conversions on behalf of the NSW Government over the first four weekends in September 2018.
- Majority of titles are held by the 4 major banks and were converted by 9 September.



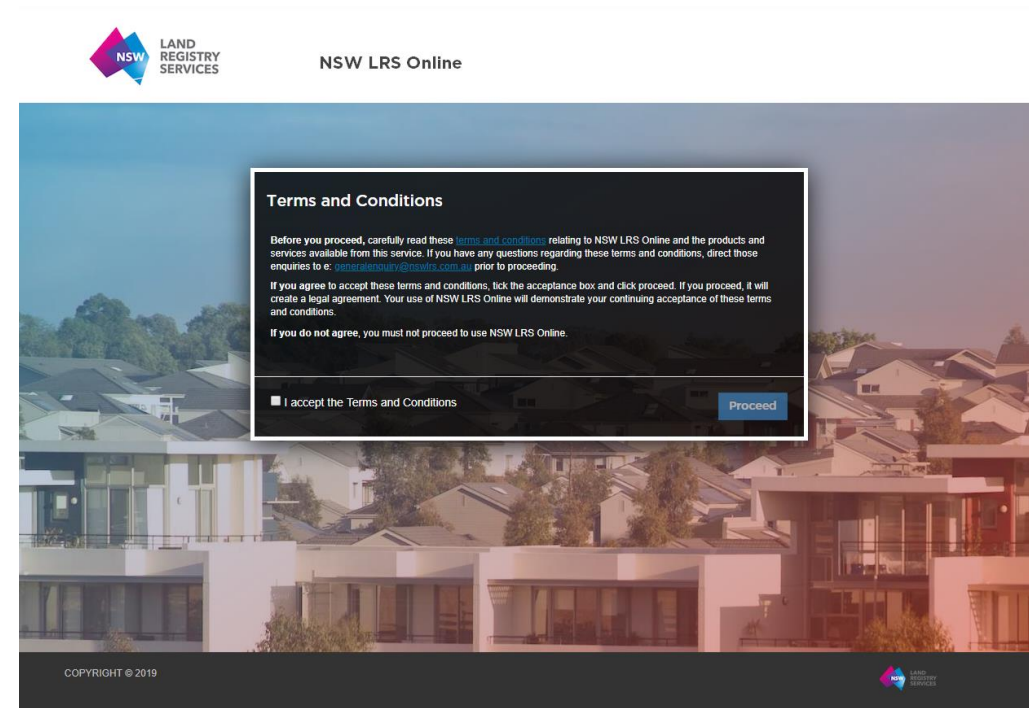
CT Bulk Conversion

Dealing with the conversion

- Treat all matters as if there will be an eCT.
- To check
 - the status of a Certificate of Title; or
 - whether a CoRD Holder Consent has been lodged.

You can conduct a free CT status search at any time at:

<http://online.nswlrs.com.au/>



CT Bulk Conversion

I have a paper Discharge of an ADI Mortgage which was not lodged before the conversion process. What do I do?

What if the Discharge of Mortgage is undated?

- A paper Discharge of an ADI Mortgage can be lodged if it is dated:
 - before 1 March 2017 and is lodged as a standalone dealing.
 - before 1 August 2017 and is lodged as part of a refinance transaction with an ADI.
 - before 1 July 2018 and is lodged as part of a refinance transaction with a non-ADI.
 - prior to the conversion of the paper CT and is lodged with dealing(s) other than mortgage(s).
- In all cases above the Discharge of Mortgage should be lodged with the paper CT.

- If the Discharge is undated it will be deemed to be dated after the relevant date above unless evidence to the contrary is provided.

CT Discussion paper

- Model 1:
 - The current mixed eCT and paper CT environment
- Model 2
 - eCTs and CoRD Holder Consents
- Model 3
 - No eCTs and no CoRD Holder Consents
- Feedback closed 28 February and is published on [ORG website](#)
- ORG to issue response to feedback and next steps



Discussion Paper

Certificates of title: the next evolution

December 2018

Submissions accepted until 5:00pm on 28 February 2019

Forward all submissions to:

Email: ORG-admin@finance.nsw.gov.au

Mail: Certificates of title: the next evolution

Office of the Registrar General
Mckell Building
2-24 Rawson Place
SYDNEY NSW 2000



Office of the
Registrar General

Recent e-caveat case

Guirgis v JEA Developments Pty Limited [2019] NSWSC 164

- Licensed conveyancer lodged caveat claiming an estate or interest pursuant to a Charge by virtue of an Agreement.
- Caveat held to be deficient in at least five respects:
 - ...For the Conveyancer to be able to state that “to the best of the knowledge of the” Conveyancer the caveator had a good and valid claim to the estate or interest claimed requires more than a casual or incomplete inquiry.
 - The ..certification that the Conveyancer had take reasonable steps to ensure that the Caveat was “correct and compliant with relevant legislation and any Prescribed Requirement” could not, on the evidence before the Court, have been correct.
 - The second certification was also, in this case, completely misleading because the Conveyancer had not retained anything...The assertion of an agreement in this context when read together with the second certification would lead any reasonable reader to think that there was a written agreement.
- Kunc J: “Lodging a caveat is not a trivial act to be undertaken lightly. It has immediate legal effect and can have significant commercial and financial consequences. Legal practitioners and licensed conveyancers who advise on, prepare and certify caveats that are lodged electronically have an important role to ensure that obviously unmeritorious caveats are not lodged”.

Recent e-mortgage case

Perebo Pty Ltd v Wayville Residential Investments Pty Ltd & Ors [2019] SACS 35

- The plaintiff loaned money to the defendants pursuant to a number of loan agreements and obtained the registration of mortgages over various properties to secure the loans. The defendants defaulted on the loans, and as a result, the plaintiff sought possession of the mortgaged properties.
- The mortgage contained a certification signed by the plaintiff's solicitor which included the following:
The Mortgagee, or the Prescribed Person, is reasonably satisfied that the Mortgagee it represents:
...(b) Holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.
- Part (b) of the certification is complemented by sections 128 and 273 of the Real Property Act 1886 which prevents the RG from registering the mortgage unless the certification is provided.
- Although there were loan agreements between the plaintiff and the defendants, the mortgagee did not hold a mortgage granted by the defendant mortgagor. The certification provided by the plaintiff mortgagee's solicitor was therefore inaccurate.
- The Court held that the plaintiff's non-compliance with the South Australian RPA and the inaccuracy of the certification did not invalidate the registered mortgage or render it unenforceable.
- However, by giving an incorrect certification, the mortgagee (or the mortgagee's representative such as a solicitor) risks facing disciplinary action from its regulator, or risks facing suspension or termination as a subscriber to an ELNO.

Thank you

- ✓ Visit the ORG website

www.registrargeneral.nsw.gov.au

- ✓ Email ORG

org-econveyancing@finance.nsw.gov.au

- ✓ Subscribe to ORG emails

<http://www.registrargeneral.nsw.gov.au/contact-us>

- ✓ Register for workshops

https://www.lawinform.com.au/blocks/androgogic_catalogue/index.php?q=transition%20to%20econveyancing

- ✓ Operational inquiries direct to LRS

- econveyancingnsw@nswlrs.com.au

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Transitioning to eConveyancing

3.75 CPD Unit Videocast

Premium price: \$253 / Standard price: \$361

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NSW LRS SERVICE STATUS

For real time NSW LRS service statuses, including any planned maintenance or outages, please visit our service status page.
You can also sign up to receive service notifications.

ECONVEYANCING INFORMATION

See our eCT page to provide more information on transacting with an eCT.
Or, if you have a question about eConveyancing, please contact us and our eConveyancing team will be happy to help.

QUICK LINKS

- Approved information brokers
- National e-Conveyancing NSW
- Registrar General's Guidelines
- NSW LRS Online portal
- NSW LRS Service Level Report

NSW LRS INFORMATION

- Temporary Search Function**
This will take you to our limited temporary search function.
- Fees**
Fees for land title products and services and WAL register transactions.
- Free online searches**
Access free index searches through the NSW LRS Online portal
- Plans and titles**
Information regarding plans and dealings
- Current NSW LRS timeframes**
Examination, registration and image capture timeframes

ANNOUNCEMENTS

- Certificate of Title Requirements Update - February 2019
- NSW LRS introduces electronic lodgment of Leases
- NSW LRS Business Arrangements Christmas & New Year 2017/8
- Relocation of NSW LRS and transition arrangements
- Changes to Historical Land records Viewer
- Proposed Terms and Conditions - September 2018
- Changes to Conveyancing Regulation 1 September 2018
- Conversion of Certificates of Title - Commences 1 September
- Additional NSW LRS Fees - Update 27 August 2018

Office of the Registrar General

Regulator | eConveyancing | Strata renewal | Title guarantee | Boundary determinations

Learn about eConveyancing

How and why register for eConveyancing? See what Solicitor Max has to say!

[Read what Max has to say](#)

What we do

- eConveyancing**
Transition to eConveyancing
- Strata renewal**
Find out more about Strata Renewal
- Title guarantee**
Policy and Legislation
- Boundary determinations**
Policy and Legislation

Our updates

- Announcements 14 Aug**
Vendor disclosure obligations: Leases and Subleases recorded on common property (1, 1)
- Announcements 14 Aug**
Participation Rules Waiver PR2/2018 - Slater & Gordon
- Announcements 27 Jul**
New Surveyor General's Deposited Plan Checklist
- Announcements 27 Aug**
New Conveyancing (General) Regulation 2018 to commence on 1 September (1, 2)
- Announcements 17 Aug**
New Community Land Development Regulation 2018 to commence on 11...
- Publications 7 Aug**
Conveyancing Rules Waiver CR 2/2018 Monetary Consideration exception
- Publications 1 Aug**
Introducing 2-year time limit on validity of Survey Certificates

190

regional and Sydney survey audits completed between 1 Jan 17 to 1 Aug 18

11,480

volumes of General Register Deeds (pre-2017) received between 1 Aug 18 and 1 Aug 18

50%

of all lodgments to July were electronic

2018 our Year

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